

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA,)	Case No. CR 89-272 RMT
)	
Plaintiff,)	ORDER DENYING
)	DEFENDANT'S MOTION FOR
vs.)	REDUCTION OF SENTENCE
)	PURSUANT TO 18 U.S.C. §
CHARLES DAVID TOOKS,)	3582 (c) (2)
)	
Defendant.)	
_____)	

This matter has come before the court on the motion by Defendant Charles David Tookes ("Defendant" or "Mr. Tookes") for a reduction of sentence pursuant to 18 U.S.C. § 3582 (c) (2). The court, having considered Defendant's moving papers, the record in this case, and other papers filed in this matter, finds as follows.¹

Defendant argues that because the court "apparently considered the difference between" a sentence option based on the Drug Quantity Table pursuant to USSG § 2D1.1 and Mr. Tookes' career offender Guideline range, the "sentencing range" to which Mr. Tookes was sentenced was delineated by the sentencing option based on the Drug Quantity Table, on one end, and the sentencing option based on the career offender on

¹ Under Federal Rules of Criminal Procedure, Rule 43(b)(4), a defendant need not be present when the proceeding involves a correction or reduction of sentence under 18 U.S.C. § 3582 (c).

1 the other end. Def.'s Took's Supplemental Brief to Reduce his Sentence Pursuant to 18
 2 U.S.C. § 3582 (c) ("Def.'s Br."), Docket No. 108, at 13. Because Amendment 706 to
 3 the Sentencing Guidelines (the "crack amendment") lowered the sentencing levels
 4 linked to the Drug Quantity Table, Defendant argues the "sentencing range" to which he
 5 was sentenced "has subsequently been lowered by the Sentencing Commission," *Id.*
 6 Defendant thus argues that under 18 U.S.C. § 3582 (c) (2),² this court has the discretion
 7 to reduce Mr. Took's sentence under the crack amendment, which was made retroactive
 8 by Amendment 713 effective March 3, 2008.

9 Although ingenious, Defendant offers no authority to support the argument that
 10 the definition of "sentencing range" under 18 U.S.C. § 3582 (c) (2) includes the level set
 11 forth by the Drug Quantity Table under the Sentencing Guidelines when a defendant
 12 was found to be a career offender. Rather than linked to the Sentencing Guidelines'
 13 Drug Quantity Table, following Congress' mandate under 28 U.S.C. § 994 (h), the
 14 career offender provision of the Sentencing Guidelines was linked to "the maximum
 15 term authorized by statute." *United States v. Summers*, 895 F.2d 615, 617 (9th Cir.
 16 1990). As Mr. Took was sentenced based on a sentencing range under the career
 17 offender provision, which in turn was based on the U.S.C. 841's statutory maximums,
 18 and not the Drug Quantity Table which the crack amendment addresses, the crack
 19 amendment does not provide a basis for reducing Mr. Took's sentence pursuant to 18
 20 U.S.C. § 3582 (c) (2).

21
 22 ² A court may reduce a sentence pursuant to 18 U.S.C. § 3582 (c) (2), which
 23 provides, in part, that:


24 [I]n the case of a defendant who has been sentenced to a term of imprisonment
 25 based on a sentencing range that has subsequently been lowered by the
 26 Sentencing Commission pursuant to 28 U.S.C. § 994(o), upon motion of the
 27 defendant or the Director of the Bureau of Prisons, or on its own motion, the court
 28 may reduce the term of imprisonment, after considering the factors set forth in
 section 3553(a) to the extent that they are applicable, if such a reduction is
 consistent with applicable policy statements issued by the Sentencing
 Commission.

18 U.S.C. § 3582 (c) (2) (West 2008).

1 Accordingly,

2 IT IS ORDERED that Defendant's Motion for Reduction of Sentence Pursuant to
3 18 U.S.C. § 3582 (c) (2) is HEREBY DENIED.
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6 Dated: December 10, 2008.

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8 ROBERT M. TAKASUGI
United States District Sr. Judge
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